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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 MARIA DEL ROSSARIO
8 JARAMILLO BALLESTEROS, as
9 Personal Representative of the
10 ESTATE OF JAIME CARRILLO
11 MONTENEGRO, and as Guardian of
12 M.F.C.J., a minor; and RAQUEL
JAVELA ROJAS as Personal
Representative of the ESTATE OF
JAIME EDUARDO HERRERA
ROMERO, and as Guardian of
J.M.H.J., a minor,

13 Plaintiffs,

14 v.

15 THE BOEING COMPANY,

16 Defendant.

C22-0393 TSZ

ORDER

17 THIS MATTER comes before the Court on a motion to dismiss for *forum non*
18 *conveniens*, docket no. 31, brought by defendant The Boeing Company (“Boeing”).
19 Having reviewed all papers filed in support of, and in opposition to, the motion, and
20 having determined that oral argument is unnecessary, the Court enters the following
21 Order.
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Background

On March 9, 2019, an aircraft operated by Latinoamericana de Servicios Aéreos (“LASER”), a Colombian airline, crashed during a domestic flight between San José del Guaviare and Villavicencio, Colombia. *See* Accident Report at 7, Ex. A to Ledford Decl. (docket no. 32-1 at 57). The aircraft in question (the “Aircraft”) was designed in California and manufactured in Oklahoma by the Douglas Aircraft Company (“Douglas”) during World War II. *See* McIntosh Decl. at ¶ 4 (docket no. 33); Ex. D to Ledford Decl. (docket no. 32-4). Douglas subsequently merged with McDonnell Aircraft and became McDonnell Douglas Corporation. McIntosh Decl. at ¶ 4. Although Boeing did not manufacture the Aircraft, Plaintiffs bring this action against it as the successor-in-interest to McDonnell Douglas following Boeing’s acquisition of the company in 1997. *See id.*; Compl. at ¶¶ 20–21 (docket no. 1-2).

Available records indicate that the Aircraft, a Douglas C-47 Skytrain (a military variant of the Douglas DC-3), was delivered to the United States Army Air Force on April 21, 1945. *See* Ex. D to Ledford Decl.; Compl. at ¶ 3. On May 14, 1945, the Aircraft was transferred to the United States Navy. *See* Ex. C to Ledford Decl. (docket no. 32-3); Compl. at ¶ 3. The Aircraft was later transferred to the University of Texas at Austin on October 8, 1971. *See* Ex. C to Ledford Decl.; Compl. at ¶ 3. On August 6, 1980, the Aircraft was certified and registered with the United States Federal Aviation Administration for commercial use before it was subsequently deregistered and exported

1 to Colombia on October 29, 1980, where it continued to operate until the date of the
2 accident.¹ *See* Ex. B to Ledford Decl. (docket no. 32-2); Ex. C to Ledford Decl.

3 On the date of the crash at issue, March 9, 2019, the Aircraft was equipped with
4 two Pratt & Whitney engines, each attached to a Hamilton Standard propeller.² Compl.
5 at ¶ 4. Approximately 11 minutes after take-off, at an altitude of 8,500 feet, the Aircraft
6 experienced a malfunction in its left engine. *See* Accident Report at 7 (docket no. 32-1 at
7 57). In response to the malfunction, the crew shut down the left engine and attempted to
8 “feather” its propeller. *Id.* at ¶ 2.6 (docket no. 32-1 at 90). Feathering refers to the
9 process of rotating propeller blades parallel to wind direction, thereby reducing
10 aerodynamic drag. *See id.* at ¶ 1.18.1 (docket no. 32-1 at 83). In a radio transmission to
11 local air traffic control, the crew reported that they were not successful in activating the
12 left engine’s propeller feathering system. *Id.* at ¶ 1.1 (docket no. 32-1 at 60). Due to a
13 continuous loss of altitude, the pilot decided to attempt an emergency landing at a nearby
14 airfield. *Id.* The crew, however, was unable to maintain control of the Aircraft and it
15 crashed at a site known as Finca La Bendición in San Martín, Colombia. *Id.* (docket
16 no. 32-1 at 61). All occupants (three crew members and 11 passengers) suffered fatal
17 injuries. *See id.* at 7 (docket no. 32-1 at 57).

19 ¹ On May 16, 2009, the Aircraft’s left engine “underwent major overhaul” at a repair facility in Florida.
20 *See* Accident Report at ¶ 1.6.5, Ex. A to Ledford Decl. (docket no. 32-1 at 67); Ledford Decl. at ¶ 8
21 (docket no. 32). During the 10 years preceding the accident, all other maintenance of the Aircraft’s
22 engines was performed in Colombia. Ledford Decl. at ¶ 8.

23 ² Plaintiffs allege that the Aircraft was originally designed and manufactured with these engines and
propellers. Compl. at ¶ 4 (docket no. 1-2).

1 Following the accident, Colombia's accident investigation authority, Grupo de
2 Investigación de Accidentes Aéreos Colombia ("GRIAA"), initiated an investigation.³
3 GRIAA concluded that the probable causes of the accident were the crew's inability to
4 feather the propeller following a malfunction in the left engine's lubrication system (loss
5 of oil pressure) and certain weaknesses in LASER's operational procedures. Accident
6 Report at 7–8 (docket no. 32-1 at 57–58). As GRIAA explained in its report, without
7 sufficient oil pressure, the propeller feathering system, which uses the same oil as the
8 engine lubrication system, failed to operate. *Id.* at ¶ 2.2 (docket no. 32-1 at 86–87)
9 ("[W]hen the [lubrication] system loses oil pressure, the propeller feathering function
10 becomes inoperative."). Although GRIAA could not identify with certainty the location
11 where the oil pressure loss occurred, it found evidence of "improper and non-standard"
12 maintenance practices on the left engine's "propeller feathering oil pressure line." *Id.* at
13 ¶ 3.1.2 (docket no. 32-1 at 93).

14 Plaintiffs are the personal representatives and families of the two Colombian
15 pilots killed in the accident. Compl. at ¶¶ 1, 11–16. At the time of accident, the decedent
16 pilots were residents and citizens of Colombia, and none of their beneficiaries resided in
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20 ³ Pursuant to Annex 13 of the Convention on International Civil Aviation, the United States National
21 Transportation Safety Board ("NTSB") assigned one representative to assist in the investigation because
22 the Aircraft was designed and manufactured in the United States. Accident Report at ¶ 1.1 (docket
23 no. 32-1 at 62); McIntosh Decl. at ¶ 2 (docket no. 33). Neither GRIAA nor the NTSB asked Boeing to
participate in the investigation or provide any documents or information regarding the Aircraft. McIntosh
Decl. at ¶ 3.

1 the United States.⁴ *Id.* at ¶¶ 15–16; Pls.’ Resps. to Reqs. for Admis. Nos. 1–5, Exs. F &
2 H to Ledford Decl. (docket nos. 32-6 & 32-8). Plaintiffs Maria Del Rossario Jaramillo
3 Ballesteros, M.F.C.J., Raquel Javela Rojas, J.M.H.J., and all other beneficiaries of the
4 Carrillo Montenegro and Herrera Romero estates are Colombian citizens. Pls.’ Resps. to
5 Interrog. No. 1, Exs. G & I to Ledford Decl. (docket no. 32-7 & 32-9). None of the
6 passengers or crew were residents or citizens of the United States.

7 Plaintiffs commenced this action in King County Superior Court and Boeing
8 removed the case to this Court. *See* Notice of Removal (docket no. 1). Plaintiffs bring
9 two causes of action against Boeing: (i) violation of the Washington Product Liability
10 Act (“WPLA”), RCW Chapter 7.72; and (ii) common law negligence. Compl. at ¶¶ 31–
11 49. Boeing now moves to dismiss this action for *forum non conveniens* in favor of
12 refiling in Colombia. As a condition to a *forum non conveniens* dismissal of this action,
13 Boeing agrees to submit to personal jurisdiction in Colombia in any action refiled there
14 by Plaintiffs within 120 days of this Order. Ledford Decl. at ¶ 2. Boeing also agrees to
15 make available any documents, witnesses, and/or other evidence within its custody or
16 control that the Colombian courts deem relevant, and to pay any damages awarded by the
17 Colombian courts in such actions, subject to any right of appeal. *Id.* For the following
18 reasons, the Court GRANTS Boeing’s motion to dismiss.

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22 ⁴ Plaintiff Raquel Javela Rojas now resides in Fremont, CA. Pls.’ Resp. to Interrog. No. 1, Ex. I to
23 Ledford Decl. (docket no. 32-9).

1 Discussion

2 A district court may, in its discretion, “decline to exercise jurisdiction in a case
3 where litigation in a foreign forum would be more convenient for the parties.” *Lueck v.*
4 *Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001) (citing *Gulf Oil Corp. v. Gilbert*,
5 330 U.S. 501, 504 (1947)). When asked to dismiss an action on the ground of *forum non*
6 *conveniens*, the district court must examine (1) “whether an adequate alternative forum
7 exists,” and (2) “whether the balance of private and public interest factors favors
8 dismissal.”⁵ *Id.*

9 **1. Available and Adequate Alternative Forum**

10 An alternative forum is “available” where the defendant is amenable to service of
11 process and “adequate” when it provides the plaintiff with “some remedy for his wrong.”
12 *Id.* at 1143. As the Ninth Circuit has recognized, the test is “easy to pass.” *Tuazon v.*
13 *R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1178 (9th Cir. 2006). A foreign forum is
14 typically considered inadequate only when the remedy it provides “is so clearly
15 inadequate or unsatisfactory that it is no remedy at all.” *Piper Aircraft Co. v. Reyno*, 454
16 U.S. 235, 254 (1981). Boeing bears the burden of proving the existence of an adequate
17 alternative forum. *See Lueck*, 236 F.3d at 1143.

21 ⁵ The Ninth Circuit has also held that a district court must make a choice of law determination. *Lueck*,
22 236 F.3d at 1143. The choice of law analysis, however, “is only determinative when the case involves a
23 United States statute requiring venue in the United States, such as the Jones Act or the Federal
Employers’ Liability Act.” *Id.* at 1148. No such statute is implicated in this action.

Boeing has identified Colombia as an alternative forum for this dispute and has provided a declaration from a Colombian attorney and former judge, Arturo Solarte Rodríguez, explaining that the parties are within the jurisdiction of Colombian courts for any claims arising from the accident. Rodríguez Decl. at ¶¶ 1, 64–66 (docket no. 35). Further, Boeing has represented to this Court that it will consent to jurisdiction in Colombia as a condition to a *forum non conveniens* dismissal. See Ledford Decl. at ¶ 2. Plaintiffs do not dispute that the parties are amenable to process in Colombia and the Court therefore concludes that Colombia is an “available” alternative forum.

Instead, Plaintiffs contend that Colombia is not an “adequate” forum because they will not be able to pursue their product liability claim in light of GRIAA’s final investigative report.⁶ Resp. at 2 (docket no. 37). In support of this argument, Plaintiffs have submitted the Declaration of Felipe Piquero, docket no. 36, a Colombian attorney. According to Piquero, “GRIAA’s reports play an authoritative role in [Colombian] civil litigation” because GRIAA’s findings “cannot be challenged in a Colombian court” and represent the “sole source of expert evidence” that Colombian courts will consider. Piquero Decl. at ¶ 6 (docket no. 33). Piquero declares that Colombian judges have given “full evidentiary value and proof” to GRIAA’s reports in all prior cases seeking civil liability for aviation accidents. *Id.* at ¶ 7. Piquero’s declaration, however, does not contain a single citation to any legal authority.

⁶ Plaintiffs do not argue that they are unable to pursue their negligence claim in Colombian courts.

1 In contrast, Boeing has submitted the Supplemental Declaration of Rodríguez,
2 docket no. 40, which explains that GRIAA's reports do not prevent the filing of civil
3 liability actions in Colombia because the reports are "not intended to determine fault or
4 liability." Suppl. Rodríguez Decl. at ¶¶ 3–4 (docket no. 40). Indeed, the GRIAA report
5 at issue in this action specifically provides that it is not "intended to indicate fault or
6 liability," Accident Report at 2 (docket no. 32-1 at 52), and at least one Colombian court
7 has found that GRIAA's conclusions can be contested, Suppl. Rodríguez Decl. at ¶ 5
8 ("[T]he Civil Cassation Chamber of the Supreme Court of Justice explained in Judgment
9 SC4103-2021 of September 16, 2021, that these reports, as with all evidence, must be
10 assessed in conjunction with all other items of evidence submitted in the proceeding, this
11 in consideration of the rules of sound judgment."); *see also* Annex 1 to Suppl. Rodríguez
12 Decl. (docket no. 40-1) (containing excerpts from Colombian case law).

13 Importantly, Plaintiffs do not dispute Boeing's assertion that Colombian courts
14 can adjudicate actions involving product liability or negligence claims (i.e., that
15 Colombian courts provide them some practical remedy). Rather, Plaintiffs' sole
16 argument regarding the alleged inadequacy of Colombian courts concerns whether
17 Plaintiffs are likely to succeed on the merits of their product liability claim in Colombia.
18 Dismissal on the ground of *forum non conveniens*, however, "may be granted even
19 though the law applicable in the alternative forum is less favorable to the plaintiff's
20 chance of recovery." *Lewis v. Liberty Mut. Ins. Co.*, 953 F.3d 1160, 1168 (9th Cir. 2020)
21 (quoting *Piper Aircraft*, 454 U.S. at 250); *see also In re Air Crash Over Taiwan Straits*
22 *on May 25, 2002*, 331 F. Supp. 2d 1176, 1184–86 (C.D. Cal. 2004) (explaining that the
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1 plaintiffs' inability to bring strict products liability claims in Taiwan did not render the
2 forum inadequate because other claims were available to them). That a Colombian court
3 might place significant weight on GRIAA's findings and conclusions does not mean that
4 Colombia is an inadequate alternative forum, and the Court finds Colombia to be an
5 available and adequate forum in which Plaintiffs can pursue their claims.

6 **2. Private and Public Interest Factors**

7 Boeing having established the availability and adequacy of Colombia as an
8 alternative forum, the Court must determine whether private and public interest factors
9 weigh in favor of dismissal. "Ordinarily, a plaintiff's choice of forum will not be
10 disturbed unless the 'private interest' and the 'public interest' factors strongly favor trial
11 in a foreign country." *Lueck*, 236 F.3d at 1145 (quoting *Gulf Oil*, 330 U.S. at 509).
12 Although a plaintiff's choice of forum is "entitled to greater deference when the plaintiff
13 has chosen the home forum," *Piper Aircraft*, 454 U.S. at 255, "this assumption is much
14 less reasonable" when the plaintiff is foreign, *id.* at 256. Thus, Plaintiffs' choice of
15 forum in this action is entitled to less deference because, with one exception, they are not
16 United States residents. Notably, Plaintiffs' four-page response largely ignores Boeing's
17 arguments regarding the various private and public interests, and Plaintiffs argue in a
18 cursory fashion that "the public and private factors generally sway in keeping the case" in
19 Boeing's home country. Resp. at 2. The Court disagrees with Plaintiffs and concludes
20 that the relevant factors support dismissal of this action in favor of refiling in Colombia.

1 **a. Private Interest Factors**

2 District courts consider any or all of the following private interest factors: (i) “the
3 residence of the parties and witnesses”; (ii) “the forum’s convenience to the litigants”;
4 (iii) “access to physical evidence and other sources of proof”; (iv) “whether unwilling
5 witnesses can be compelled to testify”; (v) “the cost of bringing witnesses to trial”;
6 (vi) “the enforceability of the judgment”; and (vii) “all other practical problems that make
7 trial of a case easy, expeditious and inexpensive.” *Lueck*, 236 F.3d at 1145 (citations
8 omitted). The balance of these factors overwhelmingly favors litigation in Colombia.

9 A significant amount of crucial documentary and physical evidence in this action
10 is located in Colombia, including LASER’s maintenance, training, and operations
11 records, GRIAA’s investigative records, and the Aircraft’s wreckage. Further, many
12 relevant witnesses are located in Colombia, including personnel with knowledge of
13 LASER’s maintenance practices and procedures. Without access to this evidence,⁷
14 Boeing argues that it cannot defend against Plaintiffs’ claim that the accident was caused
15 by defects in the Aircraft’s design, as opposed to LASER’s allegedly non-standard or
16 improper maintenance practices on the left engine’s lubrication system. Although some
17 relevant evidence is likely under Plaintiffs’ control, such as the decedents’ medical and
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21 ⁷ Plaintiffs do not dispute that this Court cannot secure the appearance of Colombian witnesses or order
22 the production of much of the evidence relevant to Boeing’s defense, or that Colombian judges lack
23 authority to order Colombian witnesses, such as LASER’s maintenance personnel, to travel to the United
States. *See* Rodríguez Decl. at ¶ 94.

1 financial records, many of the documents and witnesses necessary to support Boeing's
2 defense in this action are under the control of LASER or the Colombian government.

3 In contrast, few, if any, witnesses in the United States have first-hand knowledge
4 of the design and/or manufacture of a 77-year-old airplane. If this case was tried in the
5 United States, Boeing would likely be unable to obtain the appearance of the witnesses it
6 requires to present its defense, and the process for obtaining relevant documentary
7 evidence would be lengthy and uncertain. *Id.* at ¶ 95. If, however, this case was tried in
8 Colombia, Colombian courts would have the legal authority to obtain relevant evidence
9 from Colombian governmental entities and third parties such as LASER and to secure the
10 appearance of witnesses for both sides, *id.* at ¶ 93, and Boeing has committed to make
11 available any documents or witnesses within its custody or control that the Colombian
12 courts deem relevant, Ledford Decl. at ¶ 2.

13 In reaching the conclusion that the location of relevant witnesses and evidence
14 strongly favors dismissal, the Court's focus does "not rest on the number of witnesses or
15 quantity of evidence in each locale." *See Lueck*, 236 F.3d at 1146. Important evidence in
16 this action exists in both the United States and Colombia. Rather, the Court recognizes
17 that it cannot compel the production of Colombian evidence or secure the appearance of
18 any Colombian witnesses Plaintiffs and/or Boeing require to present their claims or
19 defenses, respectively.

20 Another factor that weighs strongly in favor of dismissal is Boeing's inability to
21 join third-party defendants such as LASER in this action. LASER does not operate in
22 Washington, meaning that the Court's ability to acquire jurisdiction over the airline is
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doubtful. *See, e.g., Baumgart v. Fairchild Aircraft Corp.*, No. SA-90-CA-818, 1991 WL 487242, at *6 (W.D. Tex. Sept. 30, 1991) (“While the Court has jurisdiction over the estate of the pilot due to the estate’s filing a cause of action that is now in this Court, the Court does not and cannot acquire jurisdiction over [the foreign airline].”). In light of GRIAA’s findings regarding LASER’s maintenance practices, the Court concludes that Boeing would be prejudiced if this action proceeded in LASER’s absence. Colombia, unlike the United States, is a “superior forum” because “actions and/or claims can be consolidated there.” *See In re Air Crash Over Mid-Atlantic on June 1, 2009*, 760 F. Supp. 2d 832, 844 (N.D. Cal. 2010); *see also* Rodríguez Decl. at ¶ 69 (explaining how Boeing could request that LASER be joined in any legal proceedings in Colombia).

b. Public Interest Factors

The public interest factors also weigh strongly in favor of dismissal. District courts consider the following public interest factors: (i) “local interest of lawsuit”; (ii) “the court’s familiarity with governing law”; (iii) “burden on local courts and juries”; (iv) “congestion in the court”; and (v) “the costs of resolving a dispute unrelated to this forum.” *Lueck*, 236 F.3d at 1147 (citing *Piper Aircraft*, 454 U.S. at 259–61, and *Gulf Oil*, 330 U.S. at 508–09). Although plaintiff Raquel Javela Rojas now resides in Fremont, CA, neither she nor any other plaintiff resides in this District. And, although Boeing has significant operations in the Western District of Washington, the Aircraft, a World War II-era Douglas C-47, was not designed or manufactured by Boeing. Other than Boeing’s position as the successor-in-interest to McDonnell Douglas, the record contains no connection between the Aircraft and the Western District of Washington.

1 The accident in question occurred when an aircraft maintained and operated by a
2 Colombian airline, piloted by Colombians, and carrying Colombian passengers, crashed
3 in Colombia, while on a domestic Colombian route. Plaintiffs cannot dispute that
4 Colombia has a significant interest in this action. “Because the local interest in this
5 lawsuit is comparatively low, the citizens of [Washington] should not be forced to bear
6 the burden of this dispute.” *See Lueck*, 236 F.3d at 1147.

7 **Conclusion**

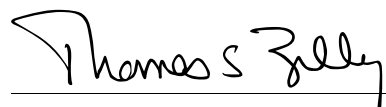
8 For the foregoing reasons, the Court ORDERS:

9 (1) Boeing’s motion to dismiss for *forum non conveniens*, docket no. 31, is
10 GRANTED, and this action is DISMISSED without prejudice in favor of refile in
11 Colombia. Colombia is an available and adequate alternative forum and the relevant
12 private and public interest factors weigh strongly in favor of dismissal. As a condition of
13 this Order, Boeing shall make itself amenable to suit in Colombia and must abide by all
14 representations made in its motion and the Declaration of Christopher Ledford, docket
15 no. 32.

16 (2) The Clerk is DIRECTED to CLOSE this case and to send a copy of this
17 Order to all counsel of record.

18 IT IS SO ORDERED.

19 Dated this 3rd day of April, 2023.

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22 Thomas S. Zilly
23 United States District Judge